

VERNER · LIIPFERT  
BERNHARD · McPHERSON & HAND  
[CHARTERED]

901 - 15TH STREET, N.W.  
WASHINGTON, D.C. 20005-2301  
(202) 371-6000  
FAX: (202) 371-6279

WRITER'S DIRECT DIAL  
(202) 371-6206

EX PARTE OR LATE FILED

December 10, 1997

**BY HAND**

Ms. Magalie Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

RECEIVED  
DEC 11 1997  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Re: Ex Parte Communications in WT Docket No. 97-82**

Dear Ms. Salas:

On December 10, 1997, Lawrence Sidman of Verner, Liipfert, Bernhard, McPherson & Hand, representing ClearComm, L.P.; ClearComm's President, Javier Lomoso; its Chief Financial Officer, John Duffy and its Senior Vice President and General Counsel, Tyrone Brown, met with Commissioner Michael Powell, Peter Tenhula, General Counsel to the Legal Advisor for Commissioner Powell, and Paul Jackson, Legal Advisor to Commissioner Powell. The meeting concerned the pending Petitions for Reconsideration of the Commission's *Second Report and Order* in its PCS C block restructuring proceeding.

The substance of this meeting reflected the arguments advanced by ClearComm in its Petition for Partial Reconsideration of the *Second Report and Order*. The attached two-page synopsis of ClearComm's Petition for Partial Reconsideration was distributed at the meeting.

In accordance with Section 1.1206 of the Commission's Rules, an original and one copy of this letter and the written ex parte presentation submitted on behalf of ClearComm are being filed with your office.

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Any questions concerning this matter should be directed to the undersigned.

Respectfully submitted,

A handwritten signature in black ink, reading "Lawrence R. Sidman". The signature is written in a cursive style with a large initial "L".

Lawrence R. Sidman

Enclosures

cc w/o encl: Commissioner Michael Powell  
Peter Tenhula  
Paul Jackson

**THE COMMISSION SHOULD ELIMINATE THE DOWN PAYMENT FORFEITURE  
FOR SMALL BUSINESS LICENSEES WHICH ELECT  
THE DISAGGREGATION OPTION**

Although the Commission's *Second Report and Order* restructuring the debt obligations of C block licensees represents a reasonable compromise in many respects, the FCC should eliminate the *Order's* requirement that a small business licensee availing itself of the disaggregation option forfeit 50 percent of its down payment presently on deposit with the Commission. The Commission should instead permit disaggregating licensees to apply those funds toward their outstanding interest obligations to the Commission following disaggregation.

- ***The Order Provides No Analytical Support For The Forfeiture***

First, unlike the penalties imposed on the amnesty and prepayment options, the Commission has provided no rationale to support the imposition of a forfeiture of 50 percent of a disaggregating small business' down payment. Unlike the other options, disaggregation does not implicate a default in any way. The *Order* acknowledges that the FCC will continue to receive full payment at the net high bid price pro-rated for the portion of the spectrum retained by the licensee. In addition, a disaggregating licensee will continue its commitment to serve each and every market it won in the auction. By contrast, licensees electing amnesty or prepayment are abandoning entire markets. Also, disaggregation presents none of the risks of unfairness or of "gaming" of future auctions that amnesty or prepayment do. The disaggregation option is merely a rational extension of a practice already permitted by the Commission's rules to which no penalty normally attaches.

- ***The Down Payment Forfeiture Undermines The Pro-Competitive Goals Of Section 309(j) And The Objectives of the Order***

Depriving disaggregating small businesses of the use of critical capital they have already raised where they are endeavoring to provide PCS service in every market they won at auction is destructive of the very objectives which are the cornerstones of the C block: ensuring that small and minority-owned businesses receive a meaningful opportunity to participate in the telecommunications sector; encouraging rapid deployment of wireless service; and facilitating the emergence of genuine competition in the marketplace. In ClearComm's case, were the forfeiture allowed to stand, it would wrest from ClearComm \$17 million in essential funds required to finance the buildout of its PCS systems. This loss would compel ClearComm to raise that \$17 million in cash a second time in today's financial markets which are far less receptive to wireless investment than they were at the time of the C block auction.

Moreover, the 50 percent down payment forfeiture would yield no countervailing public policy benefits to offset the foregoing sacrifices. The very nature of the disaggregation option, and the safeguards the Commission has crafted to govern its

usage, make the forfeiture unnecessary to preserve in any way the integrity of the auction process or fairness to other bidders. Its effect is only to yield a windfall to the Treasury without enhancing the development of competitive new PCS services.

- ***Disaggregating Licensees Should Be Permitted To Apply Their Remaining Down Payment Funds Toward Their Outstanding Interest Obligations To The FCC***

The public interest would be far better served by permitting a small business, following disaggregation, to apply its Residual Down Payment Funds toward the outstanding interest obligation the licensee owes the Commission. Affording these small start-up companies full credit for their down payments already in the Commission's possession will enable them to direct their fundraising efforts toward build-out of the licensees' markets, a use at once most attractive to investors and most beneficial to consumers.

- ***In No Event Should Disaggregating Licensees Be Penalized More Harshly Than Those Electing To Prepay***

If, contrary to ClearComm's urging, the Commission still decides to preserve some down payment forfeiture for small businesses electing disaggregation, it should reduce it. The penalty of fifty percent of the total down payment is far harsher than the thirty percent down payment forfeiture which the Commission applied to the prepayment option. At a minimum, the FCC should make the penalty functionally equivalent to that in the prepayment context, no more than thirty percent of the Residual Down Payment Funds (*i.e.*, fifteen percent of the total down payment).